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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/090,492

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Timothy A.M. Chuter

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EXAMINER

THALER, MICHAEL H

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 10/29/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,492

Applicant(s)

CHUTER ET AL.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-85 is/are pending in the application.
- 4a) Of the above claim(s) 1-8, 14, 16-28, 47, 50-53, 57-60, 63-69, 71 and 80-83 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-13, 15, 29-46, 48, 49, 54-56, 61, 62, 70, 72-79, 84 and 85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 7/1/02 & 4/7/03 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6, 13.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Claims 1-8, 14, 16-28, 47, 50-53, 57-60, 63-69, 71 and 80-83 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 15.

Claims 9-13, 15, 29-46, 48, 49, 54-56, 61, 62, 70, 72-79, 84 and 85 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 9, lines 9-10 are confusing and inaccurate. Strut 43 appears to be an integral portion of frame 40 and attaching structure 41 appears to be an integral portion of strut 43 as seen in figures 1P and 1Q, for example. Since tab 31 of graft component 30 is directly attached to attaching structure 41 of frame 40, the attaching structure 41 of strut 43 of frame 40 is not longitudinally separated from graft component 30. Claim 72 has a similar problem. In claims 54, 61 and 84, it is unclear what the endpoints are longitudinally offset from. Claims 55 and 85 are confusing and inaccurate since the expandable frame 40 rather than the reinforcing structure (e.g. 50) has end points (e.g. at 41) that are larger than the strut thickness of the reinforcing structure.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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Claims 9-13, 15, 29-33, 35-40, 42, 54-56, 61, 62 and 72, 84 and 85 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kugler et al. (6,280,466). Kugler et al., in figures 3B and 6A, disclose graft component 45 having an opening and a plurality of structures (the triangular tabs at the top of the graft component 45 as seen in figure 3B and described in col. 15, lines 32-34) extending longitudinally beyond the opening (which is located at the base of the triangular tabs), expandable frame 50 (described in col. 10, lines 7-9, which is independently expandable from the caudal zone as indicated in col. 8, lines 46-48 and col. 9, lines 51-54 and thus, by itself, may be considered a "frame"), attaching structure 55, 52, anchoring structure (the barbs 58 which can be placed at the cranial end 50 as indicated in col. 11, lines 61-63), wherein the expandable frame 50 is longitudinally separated from the graft component 45 (by members 55). Alternatively, it would have been obvious that member 50, by itself, is a "frame" for the reasons set forth above. As to claims 12 and 13, the edge portions of each tab would inherently be wrapped partially around the struts 53a, b, c, d when sutures (at 25) are wrapped around the struts and bite into the graft material as described in col. 15, line 37 to col. 16, line 4, resulting in a folding of each tab to some extent. As to

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claim 35, the end portion of barb 58 comprises a tail. As to claim 36, barb 58 is at the end of an edge of a strut. As to claims 38-40, Kugler et al. disclose reinforcing stent 30. As to claim 54, the endpoints of stent 30 at one end are longitudinally offset from the endpoints at the opposite end. As to claim 72, Kugler et al. disclose first expandable frame 50 and second expandable frame 30.

Claims 34, 41, 43-46, 48, 49 and 73-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kugler et al. (6,280,466). As to claim 34, Kugler et al. fail to disclose the barb being bidirectional. However, it was well known in this art to make stent barbs bidirectional so that they are securely attached to the artery. It would have been obvious to make the Kugler et al. barbs 58 bidirectional so that it too would have this advantage. As to claim 41, Kugler et al. fail to disclose the stent 30 being on the exterior of the graft component. However, it was well known in this art to stents on the exterior of grafts so that they do not interfere with the blood flow within the artery. It would have been obvious to locate the Kugler et al. stent 30 on the exterior of the graft component so that it too would have this advantage. As to claims 43 and 73, Kugler et al. fail to disclose the stent 30 as including a barb. However, Kugler et al. teach that stents (e.g. at 52) should include barbs so that they can be securely

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attached to the artery (col. 11, lines 58-63). It would have been obvious to include barbs on the Kugler et al. stent 30 so that this stent too would have this advantage.


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9306 for regular communications and (703)872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht
October 27, 2003


MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731